

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 3:22-cr-00055-MMD-CSD

Plaintiff.

ORDER

v.

ALFREDO VELAZQUEZ-RODRIGUEZ,

Defendant.

11 Velazquez-Rodriguez was indicted on one count of deported alien found in the
12 United States in violation of 8 U.S.C. § 1326(a) (“Section 1326”). (ECF No. 1.) Before the
13 Court is Velazquez-Rodriguez’s motion to dismiss the indictment (the “Motion”) on the
14 grounds that Section 1326 violates the equal protection guarantee of the Fifth
15 Amendment under the standard articulated in *Village of Arlington Heights v. Metropolitan*
16 *Housing Development Corp.*, 429 U.S. 252 (1977), as this Court found in *United States*
17 *v. Carrillo-Lopez*, Case No. 3:20-cr-00026-MMD-WGC.¹ (ECF No. 5.) The government
18 submits that the Court erred in its reasoning in *Carrillo-Lopez*, and therefore that
19 Velazquez-Rodriguez’s Motion should be denied. (ECF No. 16 at 4.) Because Velazquez-
20 Rodriguez is asking the same district judge to make the same decision on an issue it has
21 already ruled on, this Court will grant the Motion.

In the response, the government argues that the Court erred in *Carrillo-Lopez* in three respects: (1) by applying *Arlington Heights* instead of a more deferential standard, (2) by concluding that racial animus was a motivating factor in the passage of Section 1326, and (3) by concluding that Section 1326 would not have passed absent the

²⁷ The government responds (ECF No. 16) and Velazquez-Rodriguez replies (ECF No. 17). Velazquez-Rodriguez also incorporates the record in *Carrillo-Lopez* by reference. (ECF No. 5 at 1.)

1 demonstrated racial animus. (*Id.*) The Court disagrees and grants dismissal for the
2 following reasons. First, dismissal is consistent with the Court's prior ruling in *United*
3 *States v. Vasquez-Ortiz*, Case No. 3:21-cr-00023-MMD-WGC, where the Court dismissed
4 the indictment against the defendant, who was charged with the same offense as
5 Velazquez-Rodriguez, based on its decision in *Carrillo-Lopez*. The Court declines to
6 deviate from its prior ruling on an identical legal issue in a nearly identical case. Second,
7 Velazquez-Rodriguez correctly notes that the government is raising the same arguments
8 that it raised in *Vasquez-Ortiz*, albeit with more analysis. (ECF No. 17 at 2-3.) The
9 government offers no new arguments or evidence as to why it believes the Court erred in
10 *Carrillo-Lopez*, or why the Court should change its opinion. (ECF No. 16 at 4-14.) Because
11 the Court has already addressed the government's arguments in *Vasquez-Ortiz*, the
12 Court declines to reconsider its reasoning.

13 It is therefore ordered that Velazquez-Rodriguez's motion to dismiss the indictment
14 (ECF No. 5) is granted.

15 The Clerk of Court is directed to enter judgment accordingly and close this case.

16 DATED THIS 10th Day of August 2022.
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19 MIRANDA M. DU
20 CHIEF UNITED STATES DISTRICT JUDGE
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